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Attorneys for Plaintiff JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. RYOBI TECHNOLOGIES, INC., a Delaware corporation; TECHTRONIC INDUSTRIES NORTH AMERICA, INC., a Delaware corporation; and DOES 1 – 100, Defendants.	Case No. 3:08 CV 0070 BTM CAB **DECLARATION OF MELODY A. KRAMER IN SUPPORT OF PLAINTIFF'S MOTION FOR EXCEPTION TO STAY TO PRESERVE EVIDENCE** Date: August 8, 2008 Time: 11:00 a.m. Courtroom 15 – 5th Floor The Hon. Barry T. Moskowitz ***Oral Argument Has Been Respectfully Requested by Plaintiff***

I, MELODY A. KRAMER, declare:

1. I am not a party to the present action. I am over the age of eighteen. I have personal knowledge of the facts contained within the following paragraphs, and could and would competently testify thereto if called as a witness in a court of law.

2. At all times relevant herein I have been an attorney for Sorensen Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

3. This Declaration is being submitted in conjunction with Plaintiff's Motion for Exception to Stay for Preservation of Evidence.

4. I have requested an exception for stay for preservation of the evidence outlined in the accompanying motion by letters to Defendants' counsel, but Defendants have failed to agree.

5. A list of all Accused Products identified to date to the Defendants, whether in the Complaint or subsequent correspondence is attached to the accompanying Memorandum of Points and Authorities as Appendix B.

6. Plaintiff is requesting the items of discovery that are the subject of this motion because we believe these items of discovery are necessary and that delay until completion of the '184 patent reexamination creates the risk of loss of evidence.

7. Infringement notices and other communications regarding these products always end up in the same place – Defendant Techtronic Industries North America and its group of interrelated companies which include Defendant One World Technologies (defendant in the related *Sorensen v. Emerson Electric* case, 08cv00060).

8. Upon information and belief, the Ryobi® and Craftsman® Accused Products are manufactured through the same channels as the Ridgid® products that are the subject of the *Sorensen v. Emerson* case. As to those products, Plaintiff has received contradictory information pre-litigation from the Defendants regarding where and how the Accused Products are manufactured, whether domestically or offshore by companies other than the named Defendants, and companies which may

or may not even have common ownership to the Defendants. See the concurrently filed "Motion for Exception to Stay for Preservation of Evidence" filed in the *Emerson* case.

9. Letters from Defendants' counsel feign inability to even understand Plaintiff's request for preservation of molds and design and technical documents. True and correct copies of the relevant letters are attached hereto as Exhibit A.

SWORN TO under penalty of perjury of the laws of the State of California and the United States, this 9th day of June, 2008.

/s/ Melody A. Kramer

Melody A. Kramer, Esq.

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VIA FAX and FEDERAL EXPRESS

May 6, 2008

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Marina del Rey, CA 90292
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RE: Sorensen Research & Development Trust v. Emerson Electric, et al
USDC Southern District of California, Case No. 08cv00060
Sorensen Research & Development Trust v. Ryobi Technologies, et al
USDC Southern District of California, Case No. 08cv00070
Sorensen Research & Development Trust v. Senco Products, Inc., et al
USDC Southern District of California, Case No. 08cv00071

Request for agreement to conduct limited discovery during stay for the purpose of preserving evidence

Dear Messrs. Mallin, Perkins and Cabanday:

In accordance with the Order for stay by Judge Moskowitz in the above cases, we are hereby requesting the Defendants' agreement to preserve certain items of evidence to ensure that they will not be lost during the time that this case is being stayed. If we are unable to reach an agreement, we will be asking the Court for an order to produce this evidence.

1. All prototype and production molds used in the production of the Accused Products that are currently in the possession or control of either Defendants or non-parties; and
2. All design and technical Documents for the Accused Product that are in the possession or control of either Defendants or non-parties.
3. Initial disclosures pursuant to Rule 26(a)(1), specifically including the identity and location of all manufacturers, suppliers, and importers for the products at issue.

The products at issue at this point include the following identified products, and any other products made with the same molds or similar manufacturing process:

Sorensen Research & Development Trust v. Emerson Electric, et al

Ridgid 18V Cordless Reciprocating Saw
Ridgid HD 3/8" VSR Drill
Ridgid HD Reciprocating Saw
Ridgid 18V Cordless ½" Hammer Drill
Ridgid 18V Cordless 1/2 " Drill
Ridgid 18V Cordless Drill
Ridgid 14.4V Cordless ½" Drill
Ridgid 12V Right Angle Impact Driver
Ridgid 14.4V Impact Driver
Ridgid 12V Cordless 3/8" Drill
Ridgid Heavy Duty 3 Speed ½" Right Angle Drill
Ridgid Heavy Duty 2 Speed ½" VSR Drill
Ridgid Heavy Duty VSR Drywall Screwdriver
Ridgid Heavy Duty ½" VSR Hammer/Pulse Drill
Ridgid 7 ¼" Worm Drive Saw
Ridgid Heavy Duty 7 ¼" Circular Saw
Ridgid 18V Cordless Jig Saw
Ridgid Variable Speed Orbital Jig Saw
Ridgid Heavy Duty 11A Reciprocating Saw
Ridgid 18V Cordless Hand Planer
Ridgid Heavy Duty Variable Speed Belt Sander
Ridgid 9.6V Pivoting Screwdriver
Ridgid 9.6V Pivoting Screwdriver
Ridgid Heavy Duty ½" Two Speed Hammer Drill
Ridgid Heavy Duty VSR Drywall Screwdriver
Ridgid Professional 3/8" VSR Drill
Ridgid Heavy Duty ½" VSR Hammer Drill
Ridgid Max Select Dual Voltage Jig Saw
Ridgid Heavy Duty ½" VSR Drill
Ridgid 12 Volt Cordless 3/8" Drill
Ridgid Max Select Dual Voltage Reciprocating Saw
Ridgid 18 Volt Compact Lithium – Ion Drill
Ridgid Max Select Dual Voltage Circular Saw
Ridgid 24 Volt Lithium-Ion Cordless Hammer Drill
Ridgid Worklight
Ridgid ¼ Sheet Sander
Ridgid 5" Random Orbit Sander
Ridgid Max Select Hand Planer
Ridgid 6 ½" Compact Framing Saw
Ridgid 12 Volt Right Angle Impact Driver
Ridgid 7" Circular Saw
Ridgid 7 ¼" Worm Drive Circular Saw
Ridgid Variable Speed Orbital Jig Saw
Ridgid ½" Right Angle Drill
Ridgid Variable Speed Belt Sander
Ridgid Twist Handle Orbital Reciprocating Saw
Ridgid Heavy Duty 11Amp Reciprocating Saw

Ridgid 18 Volt Cordless Impact Driver
Ridgid 18 Volt Reciprocating Saw
Ridgid 18 Volt Circular Saw
Ridgid 18 Volt Cordless Hammer Drill

Sorensen Research & Development Trust v. Ryobi Technologies, et al

Ryobi 18.0V Circular Saw
Ryobi 13 AMP Circular Saw
Ryobi 14.4V Drill
Ryobi 18.0V Drill/Driver
Ryobi 14.4V Drill/Driver
Ryobi Hammer Drill
Ryobi 18" Electric Chainsaw
Ryobi One+ Lithium 18V Circular Saw
Ryobi One+ Lithium 18V Reciprocating Saw
Ryobi One+ Lithium 18V Drill/Driver
Ryobi One+ Lithium 18V Flashlight

Sorensen Research & Development Trust v. Senco Products, Inc., et al
Senco Collated Screw Driver

It is our understanding that manufacturing of the Accused Products has been done in China by unidentified company or companies, not by the Defendants. As such, and because we are also aware of often complicated, sometimes international, chain of company ownership, there is simply no assurance that this necessary technical information will be available to my client once the stay is lifted. Furthermore, as we already pointed out to you, failure to identify manufacturers, suppliers, and importers will make it impossible for us to assure that all evidence is preserved.

Please advise us no later than May 27th if your clients are willing to stipulate to this limited discovery during the stay, otherwise we will file a motion with the Court.

Additionally, please advise us by May 27th if Defendants have any categories of evidence that they want to ensure are preserved. Although we are cognizant of our general obligation to preserve evidence, we are willing to work with you to ensure that any particular categories of evidence that you think may be necessary when stay is lifted, are adequately preserved.

Thank you for your attention to this matter.

Sincerely,

Melody A. Kramer

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Law Worldwide

Robert S. Mallin
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May 27, 2008

Via Facsimile Transmission to 858-824-9073
And U.S. First Class Mail

Melody A. Kramer, Esq.
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San Diego, CA 92121

Re: **Sorensen v. Ryobi Technologies, Inc., et al.**
Case No. 08-CV-0070-BTM-CAB

Dear Melody:

I write in response to your letter dated May 6, 2008. Please be advised that Ryboi Technologies, Inc. and Techtronic Industries North America, Inc. will comply with their preservation requirements in accordance with the Federal Rules of Civil Procedure and applicable case law.

As for your offer to consider what categories of evidence to preserve, I assume that you will also abide by the requirements of the Federal Rules of Civil Procedure and applicable case law.

I trust that this letter resolves the issue. If you have any further concerns, feel free to contact me.

Best regards,

Robert S. Mallin

RSM:jms

cc: Roger G. Perkins, Esq.
Angela Kim, Esq.

EXHIBIT A - 7

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VIA FAX and
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June 3, 2008

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RE: Sorensen Research & Development Trust v. Emerson Electric, et al
USDC Southern District of California, Case No. 08cv00060
Sorensen Research & Development Trust v. Ryobi Technologies, et al
USDC Southern District of California, Case No. 08cv00070
Sorensen Research & Development Trust v. Senco Products, Inc., et al
USDC Southern District of California, Case No. 08cv00071
Request for agreement to conduct limited discovery during stay for the purpose of preserving evidence

Dear Mr. Mallin:

Thank you for your letters dated May 27th regarding the above-captioned cases and my request for preservation of evidence pending lift of stay in this case. I need to have some additional clarification to ensure that necessary evidence is being preserved.

We are aware from prior correspondence and investigation that all of the accused products in these cases are manufactured by companies that are not located in the United States and that are several levels of corporate structure away from the defendants in this case or by third-parties that are contracted by several levels of companies away. As such, assuring us that the named parties "will comply with their preservation requirements in accordance with the Federal Rules of Civil Procedure and applicable case law" really doesn't mean anything.

Are all prototype and production molds used in the production of the Accused Products being preserved? Are all design and technical documents for the Accused Products being preserved?

Please clarify this matter for me no later than June 13th. If we do not receive adequate assurances of where this highly relevant evidence is being held and what steps are being taken to preserve it, we will have no choice but to proceed to the Court. Be advised that Judge Moskowitz has already heard one motion for exception to stay for preservation of evidence and did order certain discovery to proceed. A copy of that ruling is enclosed with this letter.

Sincerely,

Melody A. Kramer

enclosure

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN,

Plaintiff,

vs.

BLACK & DECKER CORPORATION,

Defendant.

CASE NO. 06CV1572 BTM (CAB)

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR EXCEPTION TO STAY; GRANTING IN PART AND DENYING IN PART MOTION TO FILE DOCUMENTS UNDER SEAL; AND GRANTING REQUEST FOR ORAL ARGUMENT

For the reasons set forth on the record, the Court GRANTS IN PART AND DENIES IN PART Plaintiff’s motion for exception to stay [Doc. 264]. Plaintiff may take limited depositions of the relevant entities as set forth on the record. Plaintiff may also attempt to undertake an inspection of the out-of-district manufacturing facility through appropriate procedural avenues. Plaintiff’s request for discovery as to the alleged UK facility is denied without prejudice. The Court also GRANTS IN PART AND DENIES IN PART Plaintiff’s motion to file documents under seal [Doc. 265, 271]. Defendants shall file a publicly available version of the documents which the Court ruled should not be sealed within one week of the date of this order. The request for oral argument is GRANTED [Doc. 266].

IT IS SO ORDERED.

DATED: June 3, 2008

Honorable Barry Ted Moskowitz
United States District Judge

EXHIBIT A - 10

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BRINKS HOFER GILSON & LIONE®
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June 6, 2008

Via Facsimile Transmission to 858-824-9073
And U.S. First Class Mail

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9930 Mesa Rim Road
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San Diego, CA 92121

Re: **Sorensen v. Ryobi Technologies, Inc., et al.**
Case No. 08-CV-0070-BTM-CAB

Dear Melody:

I write in response to your letter dated June 3, 2008. Before I can respond to the requests made in that June 3 letter, I need some clarification regarding what things and information you are seeking to have preserved. Indeed, if third parties are going to commit to preserve information and things, we need to have a clear understanding of what is included. Accordingly, please identify and explain to me what you mean by the phrases:

1. "All prototype and production molds used in the production of the Accused Products."

2. "All design and technical documents for the Accused Products".

I expect that your identification of information and things will be with specificity and your explanation will be clear and concise so that both we and any third parties will understand the scope of the request. After I receive your response, I will be in a better position to fully respond to your inquiry.

Best regards,

Robert S. Mallin

RSM:jms

cc: Roger G. Perkins, Esq.
Angela Kim, Esq.